

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SY-05 SCCT-01 USSS-00 SAJ-01 IO-11

CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05

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R 111545Z FEB 76

FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 1962

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 0252

E O 11652: GDS

TAGS: PGOV, PFOR, WB, GW

SUBJ: POSSIBLE FEDERAL PROSECUTION OF LORENZ KIDNAPPERS

REFS: A. BONN 2056; B. USBERLIN 214

1. AS RECOMMENDED BY EMBASSY, REF A, SENAT LIAISON OFFICERS CONFIRMED TO HEAD OF SENAT CHANCELLORY HERZ FEBRUARY 10 THAT DISCUSSION BETWEEN LEGAL ADVISORS AND SENAT LEGAL EXPERTS JANUARY 27 WAS SOLELY TO OBTAIN INFORMATION ON JURIDICAL SITUATION AND THAT ALLIES STILL EXPECTED THAT NO DECISIONS WOULD BE TAKEN BY GERMANS UNTIL BONN GROUP HAD HAD OPPORTUNITY FOR FULL CONSULTATIONS. HERZ SAID SENAT UNDERSTOOD.

2. HERZ SAID SENAT HAD NO INDICATION HOW SOON BUBACK MIGHT REACH DECISION ON WHETHER HE WISHED TO TAKE CASE OVER. HE NOTED THAT BUBACK HAD BEEN IN BERLIN FEBRUARY 5 FOR CONSULTATIONS ON CASE WITH POLICE, BUT HE HAD MADE NO STATEMENTS AND VISIT ATTRACTED  
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VIRTUALLY NO PUBLIC NOTICE. ONLY MORGENPOST HAD

REPORTED FACT OF VISIT. HERZ SAID THERE WAS POSSIBILITY BUBACK MIGHT YET DECIDE TO ALLOW CASE TO BE HANDLED BY BERLIN PROSECUTOR, BUT THAT SUCH A DECISION WOULD HAVE TO RESULT FROM PRESSURE FROM ABOVE, PRESUMABLY FROM MINISTRY OF JUSTICE, FOREIGN OFFICE AND ALLIES. HERZ ALSO SAID HE COULD NOT EXCLUDE PERHAPS MORE LIKELY POSSIBILITY THAT BUBACK, WHO IN PRACTICE IS HIGHLY INDEPENDENT, WILL ONE DAY SIMPLY ANNOUNCE HE IS FILING CHARGES AND THAT ALLIES, SENAT AND FRG WILL THEN IN EFFECT BE FACED WITH A FAIT ACCOMPLI.

3. COMMENT: WE FULLY AGREE WITH EMBASSY AND BRITISH POINT ON PRESENTATIONAL GUIDELINES, REF A, THAT IF ALLIES WERE TO PERMIT FEDERAL PROSECUTION THEY WOULD HAVE NO BASIS TO FORBID BUBACK FROM HANDLING CASE PERSONALLY BEFORE BERLIN COURT SHOULD HE SO DESIRE. ALLIED MISSIONS, HOWEVER, SUGGESTED ONLY THAT IT BE RECOMMENDED TO FRG THAT IT ATTEMPT TO DISSUADE BUBACK FROM HANDLING CASE PERSONALLY. WE ARE NOT CERTAIN THAT BUBACK WOULD NEED VERY MUCH CONVINCING. HE MAY WELL NOT BE TOO EAGER TO BURDEN HIMSELF WITH TIME CONSUMING COURT MINUTIAE IN CASE THAT IS IMPORTANT BUT NOT OVERWHELMINGLY SO. NEVERTHELESS, WE BELIEVE THAT SUFFICIENTLY SIGNIFICANT PUBLIC RELATIONS ASPECTS ARE INVOLVED TO WARRANT PINNING POINT DOWN MORE PRECISELY.

4. IT IS OUR UNDERSTANDING THAT FEDERAL PROSECUTOR GOES INTO COURT PERSONALLY ONLY IN EXCEPTIONAL CASES. HE DID SO FOR GUILLAUME TRIAL, FOR EXAMPLE, BUT NOT FOR BAADER-MEINHOF. WHILE IT MAY BE QUITE NORMAL FUNCTIONING OF LEGAL SYSTEM FOR LORENZ KIDNAPPING TRIAL TO BE HANDLED BY FEDERAL AUTHORITIES, IT WOULD BE EXCEPTIONAL FOR IT TO BE RUN PERSONALLY BY BUBACK HIMSELF. SEVERAL BERLIN PROSECUTORS WITH WHOM WE HAVE SPOKEN INFORMALLY IN FACT HAVE INDICATED THAT THEY WOULD EXPECT BUBACK TO DELEGATE CASE TO SOMEONE FROM HIS KARLSRUHE STAFF WHO WOULD COME TO BERLIN FOR DURATION OF LEGAL PROCEEDINGS. BUBACK WOULD OFCOURSE STILL BE REGARDED AS "IN CHARGE." THERE WOULD, HOWEVER, CONFIDENTIAL

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BE SIGNIFICANT PRESENTATIONAL DIFFERENCE BETWEEN COURTROOM DRAMATICS OF RELATIVELY ANONYMOUS MEMBERS OF FEDERAL PROSECUTOR'S STAFF AND THOSE OF BUBACK HIMSELF. SOVIETS WOULD BE GIVEN MUCH GREATER OPENING TO ALLEGE ACT OF DIRECT STATE AUTHORITY OVER BERLIN BY SUB-CABINET LEVEL POLITICAL PERSONALITY IF BUBACK WERE IN COURTROOM. FACT THAT COURTROOM APPEARANCE BY BUBACK HIMSELF IS RELATIVELY RARE OCCURRENCE COULD LEAD TO

INTERPRETATION IN SOME CIRCLES THAT IT WAS INTENDED  
AS A DEMONSTRATION.

5. GIVEN ALL THESE FACTORS, WE WOULD THINK THAT FRG  
WOULD BE AWARE OF AND SYMPATHETIC TO NEED TO HAVE  
PROSECUTION COME OFF ROUTINELY, WOULD APPRECIATE  
REASONS WHY ALLIES MIGHT PREFER THAT BUBACK NOT APPEAR  
PERSONALLY BEFORE COURT, AND WOULD NOT THINK IT OFFENSIVE  
WERE ALLIES TO EXPRESS SUCH A PREFERENCE IN COURSE OF  
DISCUSSION ON MEANS TO PREVENT PROSECUTION FROM TAKING  
ON POLITICAL ASPECTS. WE ALSO NOTE, AS REPORTED REF B, THAT  
SENAT SHARES DESIRE THAT BUBACK NOT COME INTO COURT  
HIMSELF. GEORGE

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